

FIRST REGULAR SESSION

SENATE BILL NO. 444

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILSON.

Read 1st time February 24, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0847S.02I

AN ACT

To amend chapter 435, RSMo, by adding thereto five new sections relating to the resolution of disputes through the use of mediation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 435, RSMo, is amended by adding thereto five new
2 sections, to be known as sections 435.600, 435.605, 435.610, 435.615, and 435.620,
3 to read as follows:

435.600. 1. As used in sections 435.600 to 435.620 the term
2 "mediation" means a process in which a neutral third party, called a
3 mediator, facilitates communication between the participants to
4 promote resolution of their dispute. A mediator may not impose his or
5 her own judgment on the issues for that of the participants. Mediation
6 shall be non-binding. A written agreement on terms resolving the
7 dispute setting out the essential terms of the agreement, executed by
8 the participant after termination of the mediation process, shall be
9 binding to the extent not prohibited by law.

10 2. All mediation conducted in disputes for which mediation is
11 authorized by statute, by administrative agency or authority or its
12 regulations, or by contract entered in this state shall be governed by
13 sections 435.600 to 435.620. It is the policy of this state to encourage
14 the development of mediation and other alternative dispute resolution
15 programs that will meet the needs of the citizens of the state of
16 Missouri.

435.605. 1. Participants may select a mediator acceptable to all
2 participants to conduct mediation, or may apply to a court of
3 competent jurisdiction for appointment of a qualified mediator in the
4 event the participants cannot agree upon the selection. Nothing in
5 sections 435.600 to 435.620 shall prohibit the participants from agreeing

6 to the selection of a different mediator than the one selected by the
7 court.

8 2. In appointing a mediator, the court shall consider the nature
9 and extent of any relationship the mediator may have with the
10 participants and any personal, financial, or other interests the
11 mediator may have that could result in bias or conflict of interest.

12 3. Each state agency or authority establishing a mediation
13 program shall adopt rules assuring the impartiality of the mediator,
14 allowing for the removal or withdrawal of the mediator, and providing
15 for the method of compensation of the mediator.

435.610. The mediator may act as a mediator in subsequent
2 mediations between the participants. The mediator, however, shall
3 decline to act on behalf of any participant by providing subsequent
4 representation, counseling, or treatment unless the matter is clearly
5 distinct from the issues raised in mediation.

435.615. 1. The mediator shall provide notice to all participants
2 to the mediation of the date, time, and place of mediation.

3 2. The mediator shall inform the participants in writing of the
4 costs of mediation and disclose any current, past, or anticipated
5 relationship between the mediator and any participant, attorney for
6 any participant, or the subject matter of the mediation that
7 compromises or appears to compromise the mediator's impartiality. A
8 mediator shall also disclose any potential grounds of bias or conflict of
9 interest that could cause a mediator's impartiality to be reasonably
10 questioned. After appropriate disclosure, the mediator may continue
11 to serve as mediator if all participants agree unless the conflict of
12 interest clearly impairs the mediator's ability to be impartial regarding
13 the outcome of the mediation.

14 3. The mediator shall describe the role of the mediator including
15 that the mediator is impartial, that the mediator has no decision-
16 making authority regarding the outcome of the mediation, and that any
17 participant may terminate participation in mediation at any time.

18 4. The mediator shall assist the parties in identifying the issues,
19 reducing misunderstandings, clarifying priorities, exploring areas of
20 common interest, options, and points of agreement. The mediator shall
21 not give legal advice to any participant.

22 5. The mediator may terminate mediation whenever the mediator

23 believes that mediation is inappropriate because any participant lacks
24 the ability or willingness to participate meaningfully in mediation or
25 any participant is intimidated in a way that inhibits voluntary
26 decision-making of the participant.

27 6. The mediator may, at the request of the participants, make a
28 written summary of any understanding reached by the parties. A copy
29 of the summary shall be provided to the participants and their
30 attorneys, if any. Any understanding reached by the participants as a
31 result of mediation shall not be binding upon a participant until it is
32 signed by the participant.

435.620. 1. Mediation proceedings shall be regarded as
2 settlement negotiations. Offers to compromise or settle any issue that
3 is the subject of mediation and any other communications relating to
4 the subject matter of a dispute made during the mediation process by
5 a participant or any other person present during the mediation shall
6 be a confidential communication.

7 2. No admission, representation, statement, or other confidential
8 communication made in setting up or conducting mediation shall be
9 admissible as evidence in court or subject to discovery, except that no
10 fact independently discoverable shall be immune from disclosure as a
11 confidential communication.

12 3. No individual or organization providing alternative dispute
13 resolution services under sections 435.600 to 435.620, and no agent or
14 employee of the individual or organization, shall be subpoenaed or
15 otherwise compelled to disclose any matter disclosed in the process of
16 setting up or conducting mediation.

17 4. Nothing in sections 435.600 to 435.620 shall prohibit a mediator
18 who is a mandated reporter under state law to report child or elder
19 abuse.

20 5. An individual or organization providing alternative dispute
21 resolution services under sections 435.600 to 435.620, and any agent or
22 employee of the individual or organization, may be called in an action
23 to enforce a written settlement agreement signed by the participants
24 following the conclusion of the mediation for the limited purpose of
25 describing events following the conclusion of the mediation process.